

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

SCOTT S. PATRICK
DIRECT DIAL 202-776-2885
spatrick@dowlohn.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 · FACSIMILE 202-776-2222
www.dowlohn.com

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

June 30, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 03-15
KVOA-DT (Tucson, Arizona)
Facility ID No. 25735
FCC File No. BMPCDT-20031010ADG
Request for Waiver of July 1, 2005 Replication/Maximization Deadline

Dear Ms. Dortch:

KVOA Communications, Inc. ("KVOA"), permittee of KVOA-DT (Tucson, Arizona) (the "Station"), by its attorneys, hereby requests waiver of the Commission's July 1, 2005 replication/maximization interference protection deadline. KVOA continues to await grant of its pending construction permit application (FCC File No. BMPCDT-20031010ADG), which essentially proposes checklist facilities, and thus is not authorized to complete construction.

In its *Second DTV Periodic Review Report and Order*,¹ the Commission adopted a July 1, 2005 replication/maximization interference protection deadline for DTV licensees affiliated with the top-four networks in the top 100-ranked designated market areas ("DMAs"). If a station subject to this deadline had not completed construction of its replication or maximization facilities by this date it would lose interference protection to the unserved area. The Commission further stated that, in cases where a station was unable to meet the applicable deadline due to "circumstances beyond a station's control," it would "grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause

¹ Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 (rel. Sept. 7, 2004) ("*Report and Order*").

is shown.”² To receive such a waiver, broadcasters were required to make a showing “similar to that required to obtain a waiver of the DTV construction deadlines.”³

KVOA believes it satisfies the Commission’s standard for waiver of the maximization/replication deadline. According to the Commission’s staff, the pending construction permit application, despite having been filed nearly two years ago, continues to await Mexican approval. In its FCC Form 381 Pre-Election Certification, KVOA certified that it would construct facilities pursuant to a permit application that had not yet been authorized because of a pending international coordination issue (FCC File No. BCERCT-20041104AVE).

The Station already operates pursuant to STA (*see* BDSTA-20030604ACX, most recently extended by BEDSTA-20050110ACC), and, although the Commission indicated that certain stations with pending initial construction permit applications should apply for and construct “checklist” facilities by August 4, 2005,⁴ the facilities proposed in the pending construction permit application vary only slightly from “checklist.”⁵ Indeed, KVOA understandably is confused as to why the construction permit application proposing such facilities has remained pending for so long, and the Station reasonably has believed the permit would be issued at any time.

KVOA stands ready to construct full power facilities promptly upon authorization. Based upon the foregoing, however, KVOA believes that it has shown good cause for the Commission to grant waiver of the maximization/replication deadline for the Station. KVOA nonetheless understands the Commission’s desire for continued progress in the digital transition, and it is KVOA’s intention to satisfy the Commission’s policies in this regard. Should the Commission so desire, if the permit application remains pending KVOA will work in conjunction with staff persons to ascertain whatever “checklist-like” facilities promptly can be granted and will implement such facilities as soon as reasonably possible.

Respectfully submitted,



Scott S. Patrick

cc: Shaun Maher (FCC)

² *Id.*, ¶ 87. See also Public Notice, DTV Channel Election Issues – Compliance with the July 1, 2005 Replication Maximization Interference Protection deadline; Stations Seeking Extension of the Deadline, DA 05-1636 (rel. June 15, 2005).

³ *Report and Order*, ¶ 87.

⁴ *Id.*, ¶ 113.

⁵ The proposed facilities are at a slightly different location with a slightly higher HAAT.